

USE GUIDELINES TO ADMINISTER SHORTENED DAYS FOR STUDENTS WITH PROBLEM BEHAVIOR

(Remind staff of other options when full day on campus is not viable.)

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District staff, parents and individualized education program teams are often tempted to use shortened days in response to the frustrations of educating students with behavioral difficulties. This practice requires close scrutiny to determine if free appropriate public education in the least restrictive environment is abridged by a shortened day and whether progress in general curriculum toward mastery of IEP goals and objectives can be made. Also at issue is whether adequate yearly progress, as described in **No Child Left Behind Act**, can be achieved. Shortened days will rarely constitute FAPE in the LRE and leaves districts exposed to liability. They should rarely be used unless the purpose is clearly stated, truly requires this option and is for a brief period of time with a clearly written start and end date. Remind staff of other options when a full day is not viable and alternative placement is not required to achieve FAPE.

Shortened Days That May Allow Progress In General Curriculum

The following includes examples of shortened school days that may allow progress in general curriculum and mastery of individualized education program goals and objectives. Evaluation of whether these are the least restrictive solutions and whether they result in appropriate education for a specific student would still need to be made.

- **Earning physical education high school credits for activities off campus such as in a home exercise program, attendance at a gym or community night class.** Credits are being earned through alternative programming, but consider the least restrictive environment issues: Have less restrictive supports been considered? Changing staff, providing a peer buddy and other supplementary aids and supports should be ruled out before this option is considered.
- **Volunteering or paid work experience placement off campus.** IEP goals in transition are being addressed.
- **Assisting staff on campus related to IEP goals and objectives in social skills development, work experience or mastering a skill.** IEP goals are being addressed through the activities. Remember to consider the LRE issue before selecting this option. Can these goals be met with supplementary aids and supports in regular programs?
- **Attending day treatment afternoon programs at another site in which IEP goals and objectives in the social-emotional area are being taught.** This placement was determined to constitute a FAPE component for the student and does not result in less than full time educational programming.
- **Attending classes on a regular campus, followed by classes in other settings where high school units are being earned at the same rate.** Before choosing home teaching or enrollment at another site, always account for LRE considerations and see whether the IEP team is in agreement.

Ensure all shortened days are brief, for specific purposes and never in lieu of a behavior support plan if the student has behavior impeding learning of self or peers. Here are examples:

- Student with a recent brain trauma, currently in recovery, needs a transitional reduced day due to cognitive fatigue associated with recovery.
- Physician of a student transitioning to new seizure medications requests gradually increasing length of day.
- Recently adopted student from another country is experiencing transition difficulties. Parents and therapist request a gradual transition to school.
- Student with school phobia, school refusal or selective mutism is in treatment. The therapeutic plan specifies a gradual transition to full day attendance with specific beginning and ending dates specified.
- Student enrolls in school with no paperwork, though an IEP reportedly was developed in another state. A suspected disability of emotional disturbance is in question. Serious acting out is occurring. Student is placed on a shortened day or home teaching while the assessment is completed to establish eligibility and what constitutes FAPE in the LRE.

Shortened Day Considerations For Students Without IEP, 504 Plans

Q: Our principal offers selected parents the option of a two-period day for students who do not have IEP or Section 504 plans. This occurs on the student's second suspension. These "selected" parents are told this option will prevent the likelihood of an expulsion at a later date. Please comment on the use of this option for students without disabilities. Currently our school has 15 students on these shortened days congregating at the park.

A: All students, with and without disabilities, are entitled to a free appropriate education in the least restrictive environment. An education has been interpreted by the **U.S. Supreme Court** as a constitutional right (See *Goss v. Lopez* and *Brown v. Board of Education*), and therefore to remove students from full educational programming would require significant due process proceedings.

The shortened days you describe are problematic for many reasons: Are they in lieu of evaluations for suspected disabilities? Are they used instead of the site's student success team meeting to develop interventions? Are they in lieu of an analysis of what is supporting this problem behavior?

In terms of the **No Child Left Behind Act**, how can the district claim the student was taught, "to the standards" and therefore subject to the high school exit exam if the student misses a substantial amount of education? Can't this policy be seen as pushing troubled students toward the path of dropping out?

Perhaps even more troubling is the issue of offering this to "selected" parents. The option is not likely to be extended to savvy parents, but rather to parents who do not know how to advocate for their child and do not understand the district's obligation to educate all students. These parents are also more likely to be parents in poverty, with cultural, language and ethnic differences or disabilities themselves. This is a policy that would readily result in discriminatory practice, subject to civil rights protections.

Clarify Limits On Removals With All School Staff

School removals are not positive behavioral support and should not be used continuously without other strategies. To eliminate the inappropriate use of shortened days, develop individualized education program teams and school site teams capable of developing a full continuum of behavior supports, including behavior support plans. A removal that is not noted on an individualized education program still constitutes a removal and therefore is subject to the 10-day cumulative limit on removals. On the 11th day a functional behavioral assessment and any necessary behavior plan must be developed. If someone is called to pick up the child at school due to his behavior, the child is removed for a partial day. This partial day counts toward the maximum number of removals. It is not clear if the partial day removal is “rounded up” to a whole day, but attorneys agree districts should avoid being in a position in which issues of compliance hinge on measuring hours or minutes. Consider the following free appropriate public education issues:

SITUATION 1: *A parent wants to come to school and remove the child when behavior problems occur rather than having a disciplinary suspension occur.*

A removal for behavior and a suspension for behavior both constitute removals subject to IEP limitations. If the IEP knows this practice is violating FAPE in the least restrictive environment, staff must pursue resolution rather than capitulating to parental demands.

Alternative suggestion: If the parent wants to be involved in a removal, specify in a behavior support plan, under reactive strategies, stages of parental involvement. These can include 1) Having the parent talk to the child on the phone. 2) Allowing the parent to spend time sitting next to student in class. 3) Letting the parent work with student in the office, then leave campus.

SITUATION 2: *A parent is required to come to school to remove a child with behavior problems, though this removal is not referred to by staff as a “suspension.”*

Just because the staff do not view this removal as a punishment does not exempt this removal from counting towards the 10-day limit.

Alternative suggestion: If removals have occurred more than a few times, develop a behavior plan to address the problem. In addition to changes in environment and the teaching of new replacement behaviors, specify in the behavior support plan how to use in-school services in lieu of parental removal. You might: 1) Allow counselor to use debriefing strategies with the student. 2) Allow student to spend time with a faculty mentor in another classroom until calm enough to return to class. 3) Allow aide or peer to calm student in other ways.

Do Not Allow IEPs That Are Inadequate To Continue Without Resolution

If your individualized education program team has not fully identified what constitutes free appropriate public education for a student, including which supplementary aids and supports will support the least restrictive environment, the team is not excused from continuing the IEP development process.

A behavior support plan is one specification of supplementary aides and supports to allow FAPE to be delivered in the LRE. Basing the behavior plan on a functional behavioral assessment is best practice, and required if the student has had more than 10 suspensions in the school year. (Note: California state law is even more elaborate: If the BSP is not effective for a serious behavior problem, the IEP team must conduct a functional analysis assessment and develop a positive behavioral intervention plan, if warranted.) Continue seeking additional expertise until a shared vision of FAPE for this student emerges.

Examples of Inadequate Resolution

These IEPs are likely to be regarded as not providing FAPE with all necessary supplementary aids and supports as needed:

- “We knew he shouldn’t attend school only one hour a day, but we didn’t know what else to do so we are shortening his day.”
- “We can’t have him at our school. He gets in too many fights in the afternoon. He’s fine in the morning, so we will only have him on campus for the first three periods.”
- “We don’t have anyone who knows how to develop a behavior support plan.”
- “We tried writing a BSP last year, but no one would implement it, so we are shortening his day this year.”
- “We tried a BSP last year and it didn’t work, so now we are shortening his day.”
- “Suggestions in the BSP we wrote were fine, but we don’t have resources to do that, so we are shortening her day instead.”

Key IDEA Concepts For Considering Shortened Day

The IEP team is required to assure the IEP provides some educational benefit and must delineate a plan for the student to make adequate yearly progress in general curriculum.

If a hearing officer concludes the district knowingly implemented an IEP that did not constitute free appropriate public education in the least restrictive environment, compensatory education is increasingly being employed as a remedy.

Even if a parent requests an IEP for a shortened school day, the team must decline if it believes the shortened day does not constitute FAPE in the LRE.

Examples of Inappropriate Use of Shortened Day

- If the team knows the student cannot graduate due to missing credits as a result of the implementation of a shortened day described in the IEP.
- If the team knows this IEP designation of a shortened day is in lieu of a public or non-public school placement that could potentially provide a full day learning experience to meet IEP goals and allow progress in general curriculum.
- If the team knows this “shortened day” is in lieu of an appropriately developed and behavior support plan.